IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 560 of 2002.

Judgement reserved on: 29.6.2007.

Date of decision: 9.7.2007.

Amar Singh & ors. ….. **Appellants.**

Vs.

Yadav Singh & anr. …. **Respondents.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. G.R.Palsra, Advocate.**

For the Respondents : **Mr. R.K.Bawa, Sr. Advocate with Mr. Inderjit, Advocate, for respondent No.1.**

Kuldip Singh, Judge.

The legal representatives of defendant Lala Ram, have filed this appeal against judgement and decree, dated 21.11.2002, passed by learned Additional District Judge, Mandi, in Civil Appeal No. 86 of 1997, dismissing the appeal and confirming the judgement and decree of the trial court. The parties are referred in the same manner, as in the trial court.

2. The facts, as emerged from the plaint are that Yadav Singh and Smt. Meera Devi, filed a suit for declaration against defendant Lala Ram that they are legitimate children of defendant Lala Ram from Smt. Hima Devi. It is their case that Smt. Hima Devi

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Whether the reporters of the local papers may be allowed to see the Judgment?

was previously married to Jhania and from that wedlock, three sons and two daughters were born, out of whom one daughter had died. Jhania died in the year 1965 and in the year 1970 Smt. Hima Devi was married to Lala Ram after performing Jhanjhrara and settled at his house, as his wife. The plaintiffs were born to Smt. Hima Devi from Lala Ram in the years 1974 and 1976, respectively. The plaintiffs are the legitimate children of defendant Lala Ram.

3. In October, 1992, Secretary, Gram Panchayat of the plaintiffs told plaintiff No. 1 that plaintiffs are recorded in the Panchayat record, as children of Smt. Hima Devi and not of Lala Ram. On this, plaintiff No. 1 inquired from Lala Ram, who kept mum and could not offer any satisfactory explanation, rather he made lame excuses. It appears that Lala Ram in order to deprive the plaintiffs of their right in the estate, concealed the fact that they are his children. In these circumstances, plaintiffs filed the suit.

4. The defendant Lala Ram filed written statement. He took preliminary objections of limitation, mis-joinder and non-joinder of necessary parties, lack of cause of action and locus-standi. On merits, it has been denied that after the death of Jhania, Smt. Hima Devi married to defendant in the year 1970, after performing Jhanjhrara. It has also been denied that plaintiffs are the children of defendant Lala Ram from Smt. Hima Devi.

5. The trial court decreed the suit and recorded a finding that plaintiffs are legitimate children of Lala Ram from Smt. Hima Devi. The trial court returned the finding that re-marriage of Smt. Hima Devi with Lala Ram was void for the reasons that Smt.

Narayanu, the first wife of Lala Ram was alive at the time of Jhanjhrara of Smt. Hima Devi with Lala Ram. But since plaintiffs are the children of Smt. Hima Devi from Lala Ram, therefore, they are legitimate children of Lala Ram.

6. Lala Ram filed appeal against judgement and decree, dated 9.6.1997. In the lower appellate court, defendant Lala Ram died and Amar Singh, Nota Ram, Hukam Chand, Parkash Chand and Anant Ram, the legal representatives of Lala Ram were brought on record. The lower appellate court dismissed the appeal on 21.11.2002 and the appellants have filed the appeal in this court against the impugned judgement and decree.

7. The appeal was admitted on the following substantial question of law:-

(A) Whether the findings of the ld. Trial court as well as ld. Appellate court are self contradictory which has prejudiced the case of the appellants?

8. The parties were heard on following substantial question of law also:-

(B) Whether the respondents are not legitimate children of Lala Ram as the marriage between Lala Ram and Hima Devi is a nullity as per the Hindu Marriage Act, 1955?

9. I have heard the learned counsel for the parties and have also gone through the record.

Substantial questions of law No. (A) & (B).

10. The learned counsel for the legal representatives of original defendant Lala Ram has submitted that Smt. Hima Devi did

not perform Jhanjhrara type of marriage with Lala Ram and, therefore, the plaintiffs are not children of Smt. Hima Devi from Lala Ram. He has submitted that findings of trial court and appellate court are contradictory and not sustainable. In any case, the marriage of Smt. Hima Devi with Lala Ram has been found to be void by the courts below, therefore, plaintiffs are not the legitimate children of Lala Ram and the courts below have erred in granting declaration in favour of the plaintiffs that they are legitimate children of late Lala Ram. Learned Senior Advocate, appearing on behalf of the appellants, has supported the impugned judgement and decree.

11. It has been submitted by learned counsel appearing for legal representatives of Lala Ram that findings recorded by two courts below that plaintiffs are the children of Smt. Hima Devi from Lala Ram, are contradictory. He has failed to substantiate his submission from the material on record. The trial court after considering oral and documentary evidence on record has recorded a specific finding that plaintiffs are the legitimate children of Lala Ram and, therefore, they are required to be recorded in the Panchayat record. The lower appellate court has also recorded a finding that there is strong, firm and unequivocal evidence on record regarding performance of Jhanjhrara of Smt. Hima Devi with Lala Ram and, therefore, their cohabitation at Fagla in the house of Lala Ram, which proves that plaintiffs are of their offspring. There is no contradiction in the ultimate conclusion drawn by the two courts below from the material on record regarding Jhanjhrara marriage of Smt. Hima Devi with late Lala Ram.

12. The trial court has recorded a specific finding that Smt. Hima Devi was the second wife of Lala Ram, and at the time of Jhanjhrara of Smt. Hima Devi with Lala Ram, his first wife Smt. Narayanu was alive. This finding of fact was not reversed by the learned Additional District Judge, rather in the impugned judgement and decree, learned Additional District Judge, has noticed that Smt. Narayanu, was living wife of Lala Ram when Smt. Hima Devi and plaintiff were living with him. The first appeal filed by the legal representatives of defendant Lala Ram, was dismissed by the first appellate court. It is an admitted case of the plaintiffs that Jhanjhrara of Smt. Hima Devi with Lala Ram took place in the year 1970. The Jhanjhrara type of marriage of Hima Devi with Lala Ram, being second marriage of Lala Ram, during the subsistence of his earlier marriage with Smt. Narayanu, therefore, second marriage of Lala Ram with Smt. Hima Devi, was void. The plaintiffs were born in the year 1974 and 1976, respectively.

13. Section 16 of the Hindu Marriage Act, 1955 (for short, the Act), gives special right to the children of void marriage. Section 16 of the Act, is reproduced hereinbelow:-

> **Legitimacy of children of void and voidable marriages.-** (1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

> (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
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> (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

14. The Section 16 of the Act gives legitimacy to the children of void marriage. The two courts below have concurrently held that Smt. Hima Devi was married with late Lala Ram and plaintiffs are children of Smt. Hima Devi from Lala Ram. This is a pure finding of fact based upon appreciation of evidence. The learned counsel for the appellants has failed to make out any case for interference. The substantial questions No. (A) and (B), supra are decided in fravour of plaintiffs and against the legal representatives of original defendant Lala Ram.

15. No other point was urged.

16. Consequently, the appeal is dismissed with no order as to costs.

July 9, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**